

coming soon... the NEW construction general permit

The Monthly Dirt

A monthly newsletter on the California
Construction General Permit



Part 2 of a 4 Part Series

**“The world hates change,
yet it is the only thing
that has brought
progress.”**

**-Charles Kettering
(American Inventor)**

In reviewing the proposed CGP renewal, take note that the Permit’s structure has been changed. There is no longer a separate Permit attachment for each of the three risk levels. Now, all of the mandatory best management practices (BMPs) are contained in a single attachment—[Attachment D](#). Although there are still five BMP categories, one category dropped off the list (Run-on and Runoff Controls) and a new one appeared (Preserve Existing Topsoil). Let’s take a look at what else has changed in the five BMP categories...

HOUSEKEEPING: In this version of the Permit, the Water Board brings a more pragmatic stance to the previous requirements for housekeeping. For example, instead of covering and berming loose stockpiled construction materials, the new Permit requires the discharger to apply BMPs to the stockpiles to prevent erosion and pollutant transport. It may very well be the “BMPs” are indeed a cover and berm, but *we applaud the Water Board for allowing the QSD and QSP to use professional discretion to determine which BMPs are to be used.* We also like seeing the more realistic wording such as “Implement BMPs to ~~prevent control~~ the off-site tracking of sediment ...” and “secure and contain concrete washout areas and other washout areas that may contain additional pollutants ~~so there is no~~ to minimize discharge into the underlying soil and onto surrounding

As we saw in last month’s edition of the [Monthly Dirt](#), **change is coming** as demonstrated in the recent release of the [Proposed Statewide Construction Storm Water General Permit Reissuance](#). Last month we covered the new roles and definitions in the proposed Permit. This month, we will turn our focus to the new BMP requirements. Some of the changes will be applauded by the construction industry, but other changes will have an economic and logistical impact that will not be as readily received. Find out more in this second part of a four-part series on the proposed Construction General Permit renewal.

areas. Washout areas shall be covered ~~at the end of every business day~~ prior to and during a precipitation event.” These are good changes that not only bring a little more realism to the Permit but will, hopefully, help prevent permit violations and Clean Water Act lawsuits based on unrealistic Permit wording.

NON-STORM WATER:

The big change in this area involves having to control uncontaminated groundwater or spring water from construction **dewatering** activities in compliance with [Attachment J](#) of the new Permit. In [Attachment B](#), the Permit’s glossary defines “dewatering” as the process of removing **excess water** in an excavation or impoundment by pumping or other mechanical means. What elevated this in our concern was Brandon Roosenboom’s response to a question asked during the [Water Board’s April 12, 2022 workshop on the proposed CGP](#). Brandon was asked if dewatering included the discharge of storm water which had collected in trenches, basins, and low spots on a construction site. Brandon responded that dewatering **does** include pumping storm water from these types of impoundments. This is a change in thinking for many who considered dewatering to be just groundwater and other authorized non-storm water discharges. Which means, for a project utilizing an SE-2 Sediment Basin, if

Brandon’s comment is accurate, they will most likely be subject to the Attachment J requirements. The next edition of the [Monthly Dirt](#) in this 4-part series will look more in depth at the new dewatering requirements.

PRESERVE TOPSOIL:

This is a significant change in the required BMPs. Topsoil was hardly mentioned in the previous Permit, but in this Permit it rises to the rank of one of the five BMP categories. It is proposed that Dischargers need to preserve existing topsoil, **unless infeasible**, through the following practices:

- Stockpiling existing topsoil, or transferring topsoil to other locations, to deploy and re-establish vegetation prior to termination of coverage, and;
- Stabilizing disturbed topsoil during construction.

The Permit states that preserving existing topsoil is **not required** where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed such as the removal of topsoil containing invasive seedbanks, lack of space to stockpile topsoil, and sites that are designed to be highly impervious after construction with little to no vegetation intended to remain. Now you, like us, have probably noticed that there is considerable ambiguity in these topsoil requirements; therefore, it is important to pay attention to the

definitions. So what is topsoil (according to the Permit)? In [Attachment B](#), the Permit’s glossary defines **topsoil** as “the uppermost part of the soil profile, which is the most favorable material for plant growth. It is typically rich in organic matter.” This definition is still somewhat ambiguous and open to interpretation. It is unfortunate the Water Board didn’t use in its definition a more technical and field verifiable term such as [Soil Horizon](#). The current definition is open to a significant amount of subjectivity which may result in just small token stockpiles of topsoil being kept onsite. Now if you claim it is infeasible for your project to preserve topsoil, the Water Board provides a bit more guidance. The Permit’s glossary defines “infeasible” to mean the Discharger has demonstrated that the specific requirement is not technologically possible, or not economically practicable and achievable in light of best industry practices. This means that if you are not preserving and stabilizing topsoil, you will need to provide demonstration documentation as to why it is infeasible.

EROSION CONTROL:

While the previous section was ambiguous, the Water Board provided far more prescriptive language for erosion controls. It starts with the removal of the phrase “to the extent feasible” and requires the following practices:

- Implement effective wind erosion control;
- Preserve existing vegetation;
- Minimize the amount of soil exposed during construction activity;
- Minimize the disturbance of steep slopes;
- Schedule earthwork to minimize the amount of disturbed area when feasible;
- Immediately initiate stabilization for disturbed areas whenever earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days;
- Minimize soil compaction in areas other than where the intended function of a specific area dictates that it be compacted;
- Erosion control BMPs (with the exception of sprayed products) shall be available on-site or at a nearby location (e.g., common lay-down yard), year-round with trained persons able to deploy the product under the direction of the QSP;
- Re-establish vegetation or non-vegetative erosion controls as soon as practicable;
- If feasible, divert up-gradient run-on water from contacting areas of exposed soils disturbed by construction activities or convey run-on through the site in a manner that prevents erosion from areas of construction and does not compromise the

effectiveness of erosion, sediment, and perimeter controls;

- Run-on water (*Ah, this is where that missing BMP category went!*) flowing onto a site from off-site areas may be separated from a site’s storm water discharge to eliminate commingled contribution. Run-on diversion shall occur prior to entering an area affected by construction activity. Run-on flow diversion shall be conveyed through or around the construction activity in plastic pipe or an engineered conveyance channel in a manner that will not cause erosion due to flow diversion. Run-on combined with a site’s storm water discharge is considered a storm water discharge;
- Limit the use of plastic materials when more sustainable, environmentally friendly alternatives exist. Where plastic materials are deemed necessary, the discharger shall consider the use of plastic materials resistant to solar degradation;
- Control storm water and non-storm water discharges to minimize downstream channel and bank erosion; and,
- Control peak flow rates and total volume of storm water and authorized non-storm water discharges to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.

The Permit also specifies that, when using bonded-fiber matrices, hydromulches, spray tackifiers, or other land-applied products, they must be applied according to the manufacturer’s instructions and guidance and ample cure time must be provided to prevent treatment chemicals from being transported offsite by runoff. Many times these sprayed on products contain natural or synthetic chemicals to reduce turbidity through coagulation and flocculation, which the Permit terms Passive Treatment. The proposed Permit contains specific requirements for Passive Treatment in [Attachment G](#).

SEDIMENT CONTROLS:

For Risk Level 1 projects, the sediment control requirements are similar as the previous Permit. But, for Risk Level 2 and 3 there are some significant changes. These levels are required to implement the following additional erosion and sediment control BMPs for areas under active construction:

- Design and construct cut and fill slopes in a manner to ensure slope stability and to minimize erosion including, but not limited to, these practices:
 - ⇒ Reduce continuous slope length using terracing and diversions;
 - ⇒ Reduce slope steepness; and,
 - ⇒ Roughen slope surfaces with large

cobble or track walking.

- Install linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes according to sheet flow lengths as shown in Table 1 until the slope has reached Notice of Termination conditions for erosion protection. Note that in the proposed Permit, Table 1 has five slope ratio groupings as opposed to three in the previous Permit.

Table 1

Slope Ratio (Vertical to Horizontal)	Sheet flow length not to exceed
≤ 1:20	Per QSD’s specification.
> 1:20 to ≤ 1:4	35 feet
> 1:4 to ≤ 1:3	20 feet
> 1:3 to ≤ 1:2	15 feet
> 1:2	10 feet

A new requirement is to provide and maintain natural buffers and/or equivalent erosion and sediment controls when a water of the U.S. is located within 50 feet of the site’s earth disturbances, unless infeasible. This may include:

- Providing and maintaining a 50-foot undisturbed natural buffer from the edge of the disturbed area to the top of bank;
- Providing and maintaining an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or,
- Implementing erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer when infeasible to provide and maintain an undisturbed natural buffer of any size.

When using an equivalent method, sediment load may be calculated using RUSLE2 or another method approved by the Regional Water Board.

That’s a quick review of the BMP changes, join us next month as we dive more into the topic of dewatering and see how it will affect projects that impound water.

Please contact us if you have any questions ...

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MEET THE BIOLOGIST:

Danielle Teravskis, Biological Monitor

Danielle has had experience as a biological technician providing monitoring for several notable organizations including U.S. Fish and Wildlife. She specializes in monitoring construction activities and the impact on wildlife, conducting field investigations for habitat analysis, and monitoring for protected species.